IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL No. 38 OF 2016

1. M/s. Chowgule Brothers Private Limited
as Successor of M/s. Chowgule Brothers,
Chowgule House, Mormugao Harbour,
Goa.
PAN: AABCC7536P. ….. Appellant

V e r s u s

1. Assistant Commissioner of Income Tax,
Circule 2, Margao, Goa

2. Union of India,
Through the Secretary (Revenue),
Ministry of Finance, North Block,
New Delhi. …. Respondents

Mr. Mihir Nanewadekar, Advocate with Mr. Purushottam R. Karpe, Advocate for the Appellant.
Ms. Asha Desai, Advocate for the Respondents.

CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.

Date :- 01st AUGUST, 2016.

ORAL JUDGMENT: (PER F.M. REIS, J.)

Heard Mr. Mihir Nanewadekar, the learned Counsel appearing for the Appellant and Ms. Asha Desai, learned Counsel appearing for the Respondents.

2. Admit on the following substantial question of law:

Whether the impugned order dated 03.02.2016 passed by the learned Income Tax Appellate Tribunal stands vitiated to the extent that it has examined matters which were not germane to the issues raised by the Respondents before such Tribunal.

3. Heard forthwith with the consent of learned Counsel appearing for the Respondents. The learned Counsel for the Respondents waives service.

4. Upon hearing the learned Counsel appearing for the Appellant and the Respondents, though the learned Counsel for the Appellant has seriously raised objections to the findings of the learned Tribunal that such transaction is a fraud which requires to be re-examined by the Assessing Officer afresh and that three was no challenge as to whether such amount was a business or income from other sources before the learned Tribunal, we find that the main apprehension of the Appellant is that though he does not seriously object that the Assessing Officer may proceed to re-examine the matter, nevertheless, the findings of the learned Tribunal to the effect that such transaction is a fraud would seriously

affect the defence of the Appellant before the Assessing Officer.

5. The learned Counsel appearing for the Respondent points out that as the learned Tribunal during the course of the hearing found material to hold that such transaction is a fraud, it would not preclude the Tribunal from directing the Assessing Officer to re-examine such contention.

6. It is not disputed that while assailing the order passed by the CITA, the Revenue Respondent herein has not raised such contention either in the appeal memo or during the course of the hearing. It appears that some queries were put to the authorised representative of the Appellant which led to the findings in the impugned order. The learned Counsel for the Appellant, as such, is justified to contend that such findings by the learned Tribunal may influence the Assessing Officer while examining the matter afresh. As there was no appropriate hearing or opportunity to the Appellant to dispute the correctness of such contention, we find it appropriate to observe that the Assessing Officer while examining the issue afresh based on the impugned order of the learned Income Tax Appellate Tribunal, shall not be influenced by the findings of fraud and malafide intention arrived at in the impugned order passed by the learned

Tribunal as they are only tentative and prima facie findings with that regard.

7. With the above observations, the impugned order passed by the Tribunal stands confirmed and consequently remitted to the Assessing Officer. The substantial question of law is answered accordingly.

8. In view of the above, the Assessing Officer shall, accordingly, proceed to consider the matter based on the impugned order passed by the Income Tax Appellate Tribunal without in any way being influenced with the findings of fraud and malafide intention as noted in therein. All contentions of both the parties on merits are kept open.

9. The Appeal stands disposed of accordingly. Consequently, Civil Application No. 85/2016 stands disposed of.

NUTAN D. SARDESSAI, J. **F.M.REIS, J.**

msr